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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 15

Application Number: 09/679,139
Filing Date: October 03, 2000
Appellant(s): MATTHEWS, SUSAN H.

Nena Bains
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/25/02.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: There are no arguments that claims 7-8, 10, and 16 stand or fall together.

(7) Grouping of Claims

Appellant groups the claims such that each ground of rejection which applies to more than one claim, do not stand or fall together. As clearly seen from Appellant's arguments, claims 1-3, 5-6, 9, 11, 12, 14, 15, and 17-22 all stand or fall together. Since claims 7-8, 10 and 16 have not been addressed as an issue nor are they argued separately, they are deemed to stand and fall with claims 1-3, 5-6, 9, 11, 12, 14, 15, and 17-22.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,546,620	MATTHEWS	08-1996
5,930,854	O'NEILL ET AL	08-1999
4,722,713	WILLIAMS	02-1988
3,911,512	PLATE	10-1975

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5-6, 9, 11-12, 14-15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S, Pat. No. 5,546,620 to Matthews in view of U.S. Pat. No. 5,930,854 to O'Neill. was finally rejected in paper #9

(11) Response to Argument

The final rejection clearly points out that Matthews discloses pillow body as claimed except for the bar that is positioned over the pillow. Thus, O'Neill was used to teach the bar over the pillow, having attachment mechanisms to permit a toy to be coupled to and held above the pillow.

Appellant points out that Matthews' device is used for entertaining babies in the prone position (face down) by the use of straps 50 with toys attached thereto. Appellant also

points out that the straps 50 are positioned only on the back section so that it does not interfere with the support function of the device (e.g., by not being attached to the upper region of the support).

Appellant also points out that the infant support device of Matthews is also used when the infant is in a supine position (face up) and it is necessary for the toys to be "out of reach" of the removable toys (col. 4, lines 40-52).

Since the toys of Matthews attached via straps 50 are used when the infant is in the prone position only, O'Neill provides a bar for entertaining the infant when they are in the supine position without the risk of removing toys.

Appellant argues that there is no motivation or suggestion to combine the references used in the final rejection. **Both Matthews and O'Neill's devices are infant support/retaining devices and both deal with attaching toys thereto to stimulate the infant.** Matthews' device has straps attached directly to the back portion to stimulate infants in the prone position. Matthews also discloses that the support device is also used for infants in the supine position but does not provide for stimulating the infant in that position. O'Neill discloses a pillow that can be either "C" or "U" shaped onto which an infant can lie, wherein the bar 16 with toys are attached thereto for stimulating the infant in a supine position. Thus, both Matthews and O'Neill is

concerned with stimulating an infant while lying down. Taking both references as a whole, providing stimulation to an infant in any position is desirable.

On page 7, first paragraph, appellant argues that Matthews' device allows access to the toys only when the infant is in the prone position. Appellant should note that providing toys suspended via bar 16 does not constitute access. The infant, if too young to be tactically playing with the toys can be only visually stimulated without given tactile access to the toys.

On page 7, second paragraph, appellant argues that the only way to lie an infant face up on O'Neill's pillow is to deflate the annular ring to 60-70%. There is no such assertion in O'Neill. She discloses that the ring **may** be inflated to 60-70%. . . (col. 4, lines 46-55). There is no statement in O'Neill that states that the pillow must be used in this manner. It is possible to lay an infant thereon when the pillow is fully inflated or 50% inflated. However, appellant should note that such inflatability is not in question since O'Neill is used to modify Matthews, wherein Matthews only lacks the bar for which toys can be suspended.

Appellant also argues that neither Matthews nor O'Neill disclose an open well. Clearly, the central opening of Matthews is an open well that is open to a surface 42 of mat 40 on which the pillow is adapted to rest such that an infant may lie directly on the surface when lying within the well. In describing Matthews, appellant states that the mat

prevents the baby from contacting the floor when within the support. Clearly, the top surface of the mat *is* the surface. The argument that O'Neill does not disclose this limitation is irrelevant since O'Neill is used to show the bar on a pillow device and not the specifics of the pillow.

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Matthews and O'Neil clearly disclose supports that accommodate an infant with toys attached thereto. Matthews discloses a support 12 having an open well/cavity 30 defined by back section 14 and side sections (16,18) for receiving a user and permitting the user to lie directly on a surface 44 with a means to attach toys on the support to occupy the baby when on the surface. The support of Matthews also accommodates the baby in a supine position (fig. 5).

O'neill discloses at least one bar/framework 6 positioned over the pillow that accommodates toys above the support as a means to visually stimulate the child (col. 4 lines 5-13) while the infant is supported in a supine position (col. 4 lines 50-52) directly on the support surface. O'neill also discloses that the support device may be arranged to define an open well with a "C" shape or a "U" shape (col. 1 lines 50-55). Therefore, it

would have been obvious to one having ordinary skill in the art at the time of the invention to employ the framework in order to visually stimulate the child while in the supine position. Furthermore, it appears that the Appellant has argued against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

FC

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March 10, 2003

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